**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No. 535 of 1999**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE MD SHAH**

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**STATE OF GUJARAT - Applicant(s)**
**Versus**
**NATHABHAI MADHABHAI PRAJAPATI & 10 - Respondent(s)**

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**Appearance :**
PUBLIC PROSECUTOR for Applicant(s) : 1,
RULE SERVED for Respondent(s) : 1 - 11.

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**CORAM : HONOURABLE MR.JUSTICE MD SHAH**

**Date : 23/07/2007**

**ORAL JUDGMENT**

1.0 By way of this application, the applicant-State has prayed to quash and set aside the judgment and order of the learned Sessions Judge, Sabarkantha dated 17.08.1999 passed in Criminal Appeal No.26 of 1995.

2.0 The brief facts of the case are that on 01.05.1994, a tractor bearing No. GAD 9209 and trolley No. GRN 9148 owned by respondent No.1 and

driven by respondent No.8, herein, carrying 'Khakhar' woods was intercepted by a watchman Mr. Bhagabhai Andabhai Parghi. Mr. Bhagabhai, hence, informed the competent Authority about the same.

2.1 The competent Authority, therefore, raided the brick making premises of the opponent No.1 at Metral village and it found that the woods in question were transported by respondent No.2 without any valid pass or permit. Hence, the competent Authority seized the said tractor along with the woods and registered a complaint being I-C.R. No.1/94-95. The competent Authority also recorded the statements of all the accused persons.

2.2 The competent Authority, thereafter, issued show-cause notices to all the accused persons including the owner of the said tractor and trolley i.e. respondent No.1.

2.3 Respondent No.1, therefore, approached

this Court by way of Special Criminal Application No. 1747 of 1994. This Court disposed of the said matter and directed respondent No.1 to file a statement as mentioned in the show-cause notice issued by the competent Authority within a period of fifteen days and also directed the competent Authority to conclude the proceedings within a period of two months. Thereafter, respondent No.1 filed his reply vide letter dated 15.12.1994. In pursuance to that competent Authority passed the order dated 21.12.1994 and confiscated the vehicle in question and imposed fine on all the accused persons.

2.4 Being aggrieved with the same, respondent No.1 preferred criminal appeal before the appellate Court. The appellate Court was pleased to allow the said application vide order dated 17.08.1999 which is the subject matter of this application.

3.0 Heard, learned Counsel for the parties

and perused the documents placed on record. This Court has gone through the impugned order passed by the appellate Court. From the said order it transpires that on the basis of the statement made by respondent Nos.3 that the vehicle in question was hired by one Vastabhai Lalabhai to transport the woods in question and that the original owner of the vehicle in question was not issued show-Cause notice as required under the provisions of Section 61-A, the appellate Court came to the conclusion that the competent Authority has committed an error by passing the order of confiscation of the vehicle in question and passed the impugned order. However, while passing the said order, the appellate Court has not taken into consideration the statements of respondent Nos.5 to 7 and their deposition made before the competent Authority in which they have clearly stated that they had cut the woods in question on instruction from respondent No.2 and that for the same they were paid Rs.600/- by respondent No.2. The said fact is supported by

the evidence of respondent No.3 who in his deposition has stated that on the day of alleged incident he went to the place of incident with respondent No.2 and that respondent No.2 had paid an amount of Rs.600/- to the accused persons for cutting and loading the 'Khakhar' woods in the vehicle in question.

3.1 It is pertinent to note that the appellate Court has also not appreciated the evidence of said Vastabhai Lalabhai who in his deposition has stated that he had neither sold any 'Khakhar' woods from Survey No.191 owned by him nor had given copy of the said Survey No.191 to anybody. The 'Panchnama' of the said Survey No.191, carried out by the competent Authority in the presence of two panchas namely Shri. Laxmanbhai Thavrabhai Gamar, Vlg. Padhar and Shri. Lalabhai Narvabhai Parmar, Vlg. Padhar also supports the facts narrated by Shri. Vastabhai Lalabhai.

3.2 Apart from that the appellate Court has also failed to consider the contradictions in the statements made by respondent No.2. Respondent No.2, on the one hand states that the woods in question were transported in the said tractor on instructions from one Vastabhai Lalabhai and on the other hand he states that one Chunabhai Lalbhai offered him to sell the woods in question about before a week of the alleged incident. The said aspect has not been taken into consideration by the appellate Court. Thus, the said contradictions in the statements made by respondent No.2 clearly suggests that respondent No.2 was fully aware of the fact that the woods in question were obtained illegally and that the same were transported in the vehicle owned by him by respondent No.8.

3.3 Respondent No.1 is owner of the vehicle in question and is father of respondent No.2. Respondent No.2 was managing the vehicle in question as per the instructions from respondent

No.1. Therefore, it cannot be said that respondent No.1 was not aware of the fact of carrying of woods in question by respondent No.2 in the vehicle owned by him. The said aspect has also not been taken into consideration by the Appellate Court.

3.4 As regards the aspect of issuance of show-Cause notice is concerned, from the record it clearly transpires that in pursuance of the order of this Court dated 01.12.1994 passed in Special Criminal Application No.1747 of 1994, the competent Authority issued a show-cause notice to all the accused persons including the present respondent No.1 and that the same was replied by the respondent No.1 vide letter dated 15.12.1994. However, since the explanation given by respondent No.1 in the said letter was not found satisfactory by the competent Authority and passed the ordered dated 21.12.1994. Hence, it clearly transpires that the appellate Court has committed an error by holding that no notice was

issued to the owner of vehicle in question i.e. respondent No.1.

3.5 As regards the aspect of imposition of fine by the competent Authority is concerned, the appellate Court took the view that since the value of vehicle is more than the woods in question, the competent Authority has committed an error by imposing fine. It appears that while making the said observation, the appellate Court has taken into consideration only value of the woods and has not taken into consideration the quantum of damage caused to the environment. The protection of environment and ecology is one of the biggest problems of the day. With the advance of technology and modern modes of transportation it has become very easier for the culprits to get away with the offences pertaining to the environment. Therefore, it is expected of the concerned Authorities that while dealing with the offences pertaining to environment to take into consideration not only the value of the goods but

also the quantum of damage caused to the environment. If the aspect of damage caused to the environment is not taken into consideration and only the value of the goods is taken into consideration for punishing the accused persons involved in the offences pertaining to the environment, the same would frustrate the very motive behind the enactment of such laws.

3.6 In the case on hand, therefore, the appellate Court while setting aside the fine imposed by the competent Authority ought to have taken into consideration not only the value of the woods but also the quantum of damage caused to the environment on account of the act of accused persons. This Court, therefore, is of the opinion that the appellate Court has committed an error by holding that the competent Authority ought not to have imposed fine of Rs.18,000/- since the value of woods in question is less than the fine imposed by the competent Authority as well as the value of the vehicle in question.

3.7 In view of the above discussion and taking into consideration the facts and circumstances of the case and the documents placed on record, this Court is of the opinion that the order passed by the appellate Court shows total non-application of mind on the part of the appellate Court. Hence, the present revision deserves to be allowed.

4.0 In the result, the application is allowed. The judgment and order of the learned Sessions Judge, Sabarkantha dated 17.08.1999 passed in Criminal Appeal No.26 of 1995 is hereby quashed and set aside. The order of competent Authority dated 21.12.1994 stands confirmed. Rule is made absolute.

(M.D. Shah,J.)

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